

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

19 CR 374 (JMF)

6 MICHAEL AVENATTI,

7 Defendant.

Conference

8 New York, N.Y.
9 August 7, 2020
10 2:5 p.m.

11 Before:

12 HON. JESSE M. FURMAN,

13 District Judge

14 APPEARANCES

15 AUDREY STRAUSS
16 BY: ROBERT B. SOBELMAN
17 MATTHEW D. PODOLSKY
18 Assistant United States Attorneys

19 WARREN TERZIAN LLP (Outgoing Counsel)
20 Attorneys for Defendant
21 BY: THOMAS D. WARREN
22 DANIEL DUBIN

23 DAVID E. PATTON (Incoming Counsel)
24 Federal Defenders of New York, Inc.
25 Attorney for Defendant
BY: ROBERT M. BAUM
ANDREW DALACK
TAMARA GIWA
Assistant Federal Defenders

1 THE COURT: Good afternoon. This is Judge Furman.

2 Let me confirm first that Kelly, the court reporter, is on the
3 line.

4 THE COURT REPORTER: Yes. Good afternoon, your Honor.

5 THE COURT: Before I ask counsel to enter their
6 appearances, let me set a few ground rules. First, the thing
7 that anyone should say, when saying anything, is your name,
8 just so the court reporter and I know who is speaking.

9 When you're not speaking, though, please put your
10 phones on mute so there is no background noise distraction,
11 though obviously remember to unmute yourself when you want to
12 say something.

13 I don't think we'll have people coming and going,
14 given that there's a separate line for members of the press and
15 public. But if you were to hear a chime, that means that
16 someone has either joined or left the conference. And if
17 you're speaking, pause for a moment so I can figure out exactly
18 who has joined or left.

19 A reminder to everyone that this conference may not be
20 recorded. It is a violation of law and court order. At the
21 same time, it is a public conference, as it would be if it were
22 open court. So everybody should be mindful of that.

23 Finally, in the event that I get disconnected, which
24 certainly could happen, don't panic. I will make my bay back.
25 Just be patient, and I will be back in a minute or two. But I

1 will keep my fingers crossed that that doesn't happen.

2 With that, let me take appearances, beginning with the
3 government.

4 MR. SOBELMAN: This is Robert Sobelman. You have
5 Robert Sobelman and Matthew Podolsky for the United States.
6 Good afternoon, your Honor.

7 THE COURT: Good afternoon to you.

8 And for Mr. Avenatti, beginning with current counsel.

9 MR. WARREN: Yes, your Honor. You have Tom Warren and
10 Daniel Dubin for Mr. Avenatti.

11 THE COURT: Good afternoon.

12 Mr. Avenatti, are you on the line?

13 THE DEFENDANT: Yes. This is Robert Avenatti. Good
14 afternoon.

15 THE COURT: Good afternoon to you.

16 And am I correct that Robert Baum from the Federal
17 Defenders of New York is on the line?

18 MR. BAUM: Yes, Judge. Robert M. Baum from the
19 Federal Defenders of New York. I'm joined by my colleagues
20 Andrew Dalack and Tamara Giwa.

21 THE COURT: Thank you, and thank you for joining us.

22 Just to confirm, let me ask you, Mr. Warren: Is
23 Ms. Miro on the line or with us?

24 MR. WARREN: She is not, your Honor.

25 THE COURT: I may have questions about that in due

1 course.

2 First let me just confirm that I have the defendant's,
3 Mr. Avenatti's, consent to proceed by telephone today. I did
4 receive his written waiver of any right to be present. It was
5 docketed I think on August 2 but signed by him on July 31.

6 Mr. Avenatti, can I just confirm that you did indeed
7 sign that document.

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Did you read it before you signed it?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And did you confer with your lawyers
12 before you signed it?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you do understand that you may, under
15 the Constitution and Federal Rules of Criminal Procedure, have
16 the right to be physically present in court for this conference
17 and with your lawyers by your side?

18 Do you understand that?

19 THE DEFENDANT: I do, your Honor.

20 THE COURT: Is it correct that you waive that right
21 and consent to proceed today by telephone in light of the
22 public health situation that we are all contending with?

23 Is that correct?

24 THE DEFENDANT: I do, your Honor. Yes. That's
25 correct.

1 THE COURT: Mr. Sobelman, do you agree that the
2 defendant has knowingly and voluntarily waived any right to be
3 physically present that he may have?

4 MR. SOBELMAN: Yes, your Honor.

5 THE COURT: Mr. Warren, do you agree?

6 MR. WARREN: I do, your Honor.

7 THE COURT: All right. In light of the conditions of
8 Mr. Avenatti's release in the Central District of California,
9 which, as I understand it, prohibit him from using the internet
10 and prevent him from using any video conferencing application
11 or program, I am prepared and do find that video is not
12 reasonably available.

13 In light of that, let me start with the government.

14 Do you agree that under the Cares Act and the chief
15 Judge's orders relating to that act that we can proceed by
16 telephone today?

17 MR. SOBELMAN: This is Robert Sobelman. Yes, your
18 Honor.

19 THE COURT: Mr. Warren, do you agree?

20 MR. WARREN: I do, your Honor.

21 THE COURT: I agree and do so find. With that, we can
22 proceed. I've called this conference to address the motion to
23 withdraw filed by Mr. Warren and company and also the motion to
24 appoint counsel.

25 Before we get to those matters, however, I am prepared

1 to rule on Mr. Avenatti's motion filed on June 11 to transfer
2 this case to California where his other case is pending.

3 Mr. Avenatti filed an earlier motion to transfer which
4 was denied by Judge Batts on September 24 of last year. That
5 is docket number 21.

6 Judge Batts held that the so-called "Platt" factors
7 weighed heavily against transfer. Indeed that only one of the
8 Platt factors, the defendant's residence, weighed in favor that
9 that transfer.

10 In my endorsement of May 18, I noted that that
11 decision was law of the case and that I would not reconsider
12 any arguments that Judge Batts had already rejected.

13 In essence, I said that in any renewed motion,
14 Mr. Avenatti had the burden of demonstrating that COVID 19 or
15 any other changed circumstances warranted transfer or
16 reconsideration of Judge Batts' decision.

17 Mr. Avenatti fails to carry that burden. His renewed
18 motion is based on the contention that when trials resume here
19 and in California, there will be a backlog and that that
20 backlog will justify consolidation where appropriate.

21 Relatedly, he contends that having two trials poses
22 more of a public health risk than having one and that that risk
23 is particularly unwarranted as he says, given the similarity of
24 this case and the California case.

25 There are several flaws in those arguments. To name

1 but a few, first, I have no intention of trying this case or
2 any other case, for that matter, until I'm reasonably confident
3 that doing so would not endanger trial participants, including
4 prospective jurors.

5 Second, transferring this case would, in many ways,
6 actually increase public health risks and the risks to
7 participants in the sense that it would require lawyers,
8 agents, witnesses, and perhaps others to travel cross country
9 for a trial in California.

10 And third, as the government notes, the motion rests
11 on a faulty premise that the two cases are similar and would be
12 consolidated if this case were transferred. Judge Batts
13 explicitly rejected that already argument, a decision that, as
14 noted, I will not revisit but, for what it's worth, also seems
15 right to me. And indeed Mr. Avenatti himself is apparently
16 seeking or apparently sought severance in California. So there
17 may be multiple trials there regardless.

18 On top of that and for what it's worth, several of the
19 Platt factors actually weigh more heavily against transfer
20 today than they did at the time of Judge Batts' decision.

21 For example, the first factor, the location of the
22 defendant, as I understand it, Mr. Avenatti has been released
23 only temporarily pursuant to 18 U.S.C. Section 3142(i),
24 which is to say that at some point when the public health
25 circumstances have changed, he will presumably be remanded back

1 into custody.

2 It follows that his location will be determined by the
3 U.S. Marshals service, not by him. And that factor therefore
4 no longer weighs in favor of transfer.

5 In addition, the fifth factor, disruption of the
6 defendant's business, by his own admission in the affidavit
7 that he filed in support of his motion for appointment of
8 counsel, he has been suspended from the bar of California and
9 his business is effectively nonexistent at this time.

10 That would be even more so if or when he is taken back
11 into custody by the marshals. So, again, that factor weighs
12 even more heavily against transfer today.

13 The sixth factor, the expense of parties, if he is in
14 the custody of the Marshal Service, then obviously he wouldn't
15 incur any expenses for travel and lodging. Those expenses
16 would be incurred by the taxpayers instead. And so too if I
17 grant his motion for appointment of counsel, legal fees would
18 not be an issue. So that factor also weighs against transfer.

19 Someone just joined I'm assuming. Can I just pause
20 for a moment and ask if someone just joined the conference.
21 All right. I don't know if somebody left then.

22 Ms. Smallman, are you on?

23 THE DEPUTY CLERK: I am. While it shows that an 11th
24 person joined the line that we are currently on, the monitor
25 does not. So I am unsure what has happened.

1 THE COURT: Let me make sure that everyone is still
2 on, beginning with Mr. Avenatti.

3 Are you on?

4 THE DEFENDANT: Michael Avenatti. Yes, your Honor.

5 THE COURT: Mr. Warren, are you on?

6 MR. WARREN: Yes, I am, your Honor.

7 THE COURT: Mr. Sobelman, are you on?

8 MR. SOBELMAN: Yes, your Honor.

9 THE COURT: And, Kelly, are you still on?

10 THE COURT REPORTER: Yes, I'm here.

11 THE COURT: Very good. So we can continue, leaving
12 that a mystery.

13 So as I was saying, if I grant the motion for
14 appointment of counsel, then legal fees would no longer be an
15 issue. So the sixth Platt factor weighs more heavily against
16 transfer today.

17 And then finally, if I grant appointment of counsel,
18 then the location of counsel, the seventh Platt factor, would
19 also weigh more heavily against transfer today.

20 In short, not only has Mr. Avenatti failed to carry
21 his burden of showing that changed circumstances weigh in favor
22 of a different result today, then when Judge Batts decided the
23 issue last September, if anything, the argument for transfer is
24 even weaker today than it was then. So the renewed motion is
25 denied.

1 With that, I'll turn to the issues relating to
2 Mr. Avenatti's representation. There are two motions pending
3 on that. One is a motion to withdraw by the Warren Terzian law
4 firm on two grounds: One, that there is an unwaivable conflict
5 of interest, and the second is that Mr. Avenatti is no longer
6 paying their fees and no longer can pay their fees, and then
7 relatedly a motion to appointments the Federal Defenders as
8 court-appointed counsel.

9 Before I turn to those motions, though, let me address
10 one related or preliminary matter which is the application to
11 seal the CJA 23 form and Mr. Avenatti's affidavit.

12 I did grant that motion on counsel's application in
13 light of the fact that they had been sealed or similar
14 documents had been sealed by Judge Selna in connection with the
15 application made to him.

16 For what it's worth, I later confirmed that in the
17 normal course, while the fact of a CJA 23 form is noted on the
18 docket, it's not available, at least electronically, on a
19 docket in view of the sensitive, personal, and financial
20 information contained on those forms.

21 Having said that, upon reflection, I think the
22 question of whether those documents should be public in this
23 case warrants further briefing. I do recognize that they
24 contain private information or information that Mr. Avenatti
25 may not want to share with the public.

1 But at the same time, there is obviously some public
2 interest in ensuring that taxpayer dollars are spent
3 appropriately, that is, that counsel is being appointed
4 appropriately.

5 And in this case in particular, I would think that
6 there might be a public interest, given that not long ago,
7 Mr. Avenatti certainly had sufficient funds to afford plenty of
8 lawyers.

9 The fact that Judge Selna has sealed something similar
10 which was the full basis for the application here does not mean
11 to me that the documents filed independently in this court
12 should remain sealed.

13 Among other things, the law in the Ninth Circuit and
14 the law here on public access may well be different. But in
15 any event, the fact that one judge thinks that something should
16 be sealed doesn't mean that another judge faced with the same
17 document filed in that case needs to reach the same conclusion.

18 That is to say, if the right to public access calls
19 for those documents to be public, then I think they should be
20 public, without regard for what Judge Selna has done.

21 In light of that, I will direct defense counsel,
22 however that is at the end of this conference, to show cause
23 within two weeks why the two documents, the CJA 23 form and
24 Mr. Avenatti's affidavit, should not be unsealed.

25 And the government can respond within one week of that

1 submission on the theory that there may be third parties,
2 members of the press, or the like who wish to be heard on that.
3 As well, they would have to file something by the government's
4 deadline accompanied by a letter motion seeking leave to be
5 heard. In the meantime, I'll keep those documents under seal,
6 and they may remain under seal. But I just think it warrants
7 further consideration.

8 With that, let's turn to the actual motions.

9 Mr. Warren, let me start by just asking and circling back to
10 Ms. Miro, asking what her status is.

11 She has not filed a motion to withdraw. I guess that
12 leaves me a little puzzled. Your motion to withdraw may not
13 have any bearing on her status and vice versa. But certainly
14 the request to appoint counsel seems a little odd as long as
15 there are other counsel remaining on the case.

16 MR. WARREN: Yes, your Honor. I anticipate Ms. Miro
17 will seek to withdraw as well. She was retained for the
18 specific purpose of dealing with custody issues at MCC. She's
19 a brand new lawyer. She's a good lawyer, but she's never had a
20 criminal trial. Her experience in this realm is somewhat
21 fresh.

22 So I anticipate that to the extent that the Court
23 believes that having the Federal Defenders come in is
24 appropriate, that she will withdraw as well.

25 THE COURT: All right. Very good. Let's take these

1 in order.

2 First, the motion to withdraw filed by the Warren
3 Terzian firm is granted. Upon review of the ex parte affidavit
4 from Mr. Warren, which provided some information regarding the
5 conflict issue, I do agree that there is an unwaivable conflict
6 of interest that would justify withdrawal. Separate and apart
7 from that, the fact that Mr. Avenatti can no longer pay and is
8 no longer paying their fees justifies withdrawal.

9 That might not have been the case if allowing
10 withdrawal would impact the trial date. But for reasons that
11 we will discuss in short order and are probably obvious, I
12 don't think that is the case here. So for a combination of
13 those reasons, the motion to withdraw is granted.

14 That brings me to the motion to appoint the Federal
15 Defenders. I guess, Mr. Sobelman, I wanted to give you an
16 opportunity to be heard. Your letter indicated that, in
17 essence, the motion to withdraw should be granted only in the
18 event that a motion to appoint counsel was made in short order.

19 That obviously has now been made. I don't know if
20 that changes your position on the matter or if you have a view
21 with respect to Ms. Miro's involvement or if you wish to be
22 heard.

23 Mr. Sobelman.

24 MR. SOBELMAN: Yes. This is Robert Sobelman. Thank
25 you, your Honor, for giving us the opportunity to state our

1 view.

2 We take no position at this time on whether the Court
3 should grant the application to appoint the Federal Defenders
4 or perhaps await Ms. Miro's apparent motion to withdraw. We
5 defer to the Court on this point.

6 THE COURT: Mr. Warren, let me circle back to you.

7 Let me say that your withdrawal, just to be clear, is
8 conditioned on two things: One is that you'll provide any and
9 all materials related to the case promptly to new counsel,
10 whoever that is; and secondly, you'll provide any assistance
11 that's needed to get up to speed and ensure the smooth
12 transition of counsel.

13 MR. WARREN: Understood, your Honor.

14 THE COURT: Can you just elaborate on the Ms. Mori
15 question.

16 Is it your understanding that she would file a motion
17 to withdraw promptly? Can I set a deadline for her to do that?

18 On the one hand, I think it would be best,
19 particularly with Mr. Baum being here, to ensure continuity of
20 counsel and that counsel who is more likely it sounds like to
21 try the case is appointed sooner rather than later.

22 As I said, it's a little bit odd to do it in that
23 order.

24 MR. WARREN: Yes, your Honor. I don't want to speak
25 for Ms. Miro, and I know she's not on the call. I certainly

1 think it would be appropriate for the Court to order her to
2 withdraw within a certain period of time so that there is not
3 an overlap between the Federal Defenders and her
4 representation.

5 THE COURT: All right. So I think what I will do is
6 set a deadline for her to do that, and I'll issue an order to
7 this effect but trust that you can convey this, to file any
8 motion to withdraw within a week just to clarify things.

9 In the meantime, based on your representation that she
10 was hired principally, if not exclusively, to deal with issues
11 surrounding Mr. Avenatti's detention at the MCC and your
12 representation that she does intend to withdraw, I think I will
13 not wait for that, even if that's sort of the normal course,
14 and I will proceed to appoint Mr. Baum and the Federal
15 Defenders to represent Mr. Avenatti.

16 Let me say a few things about that: First, I am
17 persuaded by Mr. Avenatti's affidavit that he is eligible for
18 appointment of counsel in the sense that he could not at
19 present afford counsel.

20 But it is a slightly unusual case in the sense that
21 his affidavit acknowledges that he has an ownership interest in
22 certain assets that are essentially undetermined I think is the
23 word that he uses -- their value is undetermined -- and, in
24 particular, things that might yield funds in the future such as
25 contingency lawsuits and the like.

1 It raises the possibility, however remote, that
2 Mr. Avenatti's financial circumstances could change in the
3 future and that he would no longer be eligible for the
4 appointment of counsel.

5 So in light of that, while I will appoint the Federal
6 Defenders to represent him today, number one, I'm going to
7 require Mr. Avenatti to submit an affidavit every four months
8 from today regarding his financial circumstances and noting
9 with specificity any change in those circumstances since the
10 prior affidavit just to ensure that if he comes into any of
11 those funds or wins the lottery or anything of that sort and is
12 able to afford counsel, that I take appropriate steps at that
13 point.

14 And relatedly, Mr. Baum, I'm going to direct you to
15 keep at least rough track of the hours that the Federal
16 Defenders spends on this matter so that in the event that I
17 determine later that Mr. Avenatti should be ordered pursuant to
18 U.S. Code, Section 3006A(f) -- that I order him to reimburse
19 the taxpayers for legal fees, that I have an idea what that
20 amount should be.

21 Mr. Baum, do you think you can do that?

22 MR. BAUM: Yes, Judge.

23 THE COURT: Very good.

24 All that is to say that I assume Ms. Miro will
25 presumably withdraw in short order and certainly have to file

1 any motion to that effect next week and that Mr. Baum and
2 company will be representing Mr. Avenatti going forward.

3 The last remaining issue on my agenda -- and then I'll
4 hear if you have anything else to raise -- is the question of a
5 trial date. It is currently -- Mr. Baum, I don't know if
6 you've looked at the docket, but it's.

7 MR. BAUM: I have looked at the docket. Thank you.

8 THE COURT: Trial is currently set for October 13.
9 When I set that date, I indicated that the parties should
10 advise me 60 days before the trial date whether they believed
11 an adjournment was appropriate on account of COVID-19.

12 That deadline, the 60-day deadline, by my calculation,
13 is only about a week or so away. So I would be inclined to
14 address the issue now since we're all together.

15 To be blunt, I don't think that this case will be
16 triable in October, putting aside the substitution of counsel.
17 I think that we will be lucky if this district resumes jury
18 trials in October, although that is certainly the hope and, at
19 present, the plan.

20 Even if we do, that would be the very beginning of the
21 resumption of trials. It's my view that this case would not be
22 the appropriate test case for whether a trial is doable in the
23 current public health circumstances.

24 That is to say, given the number of public and press
25 interest in this case and the number of people who might be

1 interested in attending it, it just seems like the wrong case
2 to begin that experiment with. On top of that, I would imagine
3 that Mr. Baum needs some time to get up to speed and to prepare
4 for trial.

5 We could adjourn to a date specific. The alternative
6 would be to schedule a conference or a control date, perhaps
7 even the October 13 date on which trial was supposed to begin,
8 at which time we can look at the matter and may have a better
9 sense of when trial would be realistic.

10 The one thing that we do need to decide now though is,
11 as counsel may know, the district recently adopted a plan to
12 deal with the fact that if trials resume, there will only be a
13 handful of courtrooms that are feasible or amenable to have
14 safe, public, socially distanced trials proceedings in.

15 In light of the fact and in light of the fact that
16 there will be indeed be a backlog, there is a protocol and a
17 plan that we have adopted to basically figure out which trials
18 should proceed first and a schedule for whatever cases need to
19 be tried.

20 My deadline for submitting a trial to be considered --
21 sorry. My deadline for any trial that I want to try this
22 calendar year during 2020 is two weeks away. So what we do
23 need to decided today is whether we think it is realistic or
24 advisable to try and schedule this case for trial in 2020. If
25 so, then we should adopt a date certain. If not, I think we

1 can adopt the pretrial conference control date approach.

2 Mr. Baum, let me start with you and get your thoughts
3 on that.

4 MR. BAUM: Thank you, Judge.

5 Of course, as you noted, what must happen now from my
6 end is that myself and my colleagues must get up to speed in
7 terms of discovery. I have no idea how much discovery there is
8 or how long it will take to review that.

9 But I suspect that we might be able to report to the
10 Court by October 13. Obviously we're starting fresh. We have
11 virtually no knowledge of the case, other than what I've been
12 able to discover by reviewing the docket sheet and attempting
13 to go through documents that were filed on the docket sheet
14 which do not contain any discovery.

15 On top of that, there are potential witnesses that we
16 would need to interview and discuss with Mr. Avenatti. I would
17 add, Judge, although I know that you have denied his motion, we
18 would like an opportunity to determine whether there should be
19 any motions going forward, once we complete our review of
20 discovery.

21 So my thoughts, of course subject to your final
22 judgment, is that we should meet again on October 13 or
23 thereabouts and set a trial date at that time, assuming that
24 there are no obstacles to doing that.

25 And I will of course endeavor, along with my

1 colleagues who will be trying this case with me, to go through
2 discovery as expeditiously as possible, to review whether there
3 need be any motions, with all due respect to Mr. Warren, that
4 we think are appropriate to be filed, and of course start the
5 process of determining whether witnesses will be called and
6 what witnesses will be called and start to interview those
7 witnesses.

8 So don't think it's realistic to believe that this
9 case will end up being tried before January 1, again, taking
10 into account what I just said, as well as the protocols which
11 you've gone there which I'm fully aware of. Mr. Avenatti's
12 case, at least at present, would not receive a preference
13 because he's not incarcerated.

14 Also I'm aware of the list that needs to be submitted,
15 and we're obviously going to miss the deadline if we're given
16 the opportunity to review the discovery about setting a trial
17 date.

18 THE COURT: Yes. I would add, among the
19 considerations for why I think this case is probably more
20 difficult to try in the current public health circumstances, we
21 are planning to use a juror questionnaire I presume that the
22 venire panel will have to be larger than it would otherwise
23 would have to be in a case of this nature. Obviously that is a
24 much more difficult thing to do at present.

25 Mr. Sobelman, let me turn to you. Do you have any

1 objection to adjourning the trial sine die and scheduling a
2 conference around the date of the trial, so the week of
3 October 12, at which time we can hopefully set a new trial date
4 and hopefully convene in person for that matter?

5 MR. SOBELMAN: Your Honor, just a couple of responses:
6 First, Mr. Baum mentioned potentially making additional
7 pretrial motions.

8 THE COURT: Can I stop you there.

9 MR. SOBELMAN: Yes, your Honor.

10 THE COURT: I'm obviously not going to preclude
11 Mr. Baum from making an effort. But as I think he is probably
12 aware, he would have an uphill climb to persuade me that at
13 this point Mr. Avenatti should be granted leave to file any
14 motions.

15 He's had an opportunity to do that. He had one before
16 Judge Batts. He was given an opportunity to renew his motion
17 to transfer and has had plenty of time since then to raise
18 other issues. Given that, he would certainly have to persuade
19 me that a late motion would be appropriate.

20 Let me say that, and then turn it back to you,
21 Mr. Sobelman.

22 MR. SOBELMAN: Thank you, your Honor.

23 THE COURT: All right. Go ahead.

24 MR. SOBELMAN: I just want to flag one other data
25 point for the Court which the Court may be aware of which is

1 that the Central District of California trial is presently
2 scheduled for December 8, 2020.

3 Of course California is dealing with the same or maybe
4 more difficult circumstances than we currently have in
5 New York. So we don't know whether that trial will proceed or
6 not. We just don't have information either way. We assume it
7 will, unless it's changed. But I wanted to provide that data
8 point for the Court.

9 With respect to whether the Court should set a date
10 now or simply set a conference, the government understands that
11 defense counsel will need time with the discovery and to speak
12 with their new client and potentially investigate the case.

13 We don't want to rush anyone to trial, particularly in
14 the present circumstances. However, our concern with setting
15 no date at all, even if it were far away, is that we may have
16 issues getting a spot on your Honor's calendar or on the
17 assignment committee's prioritization at a later point.

18 So if we could ask that the Court set a date, even if
19 it were in 2021, so we can all sort of work around that date,
20 obviously potentially subject to change, if the circumstances
21 require it.

22 MR. WARREN: Your Honor, it's Mr. Warren. I have a
23 quick note for your Honor, if I may. I just wanted to let the
24 Court know that the Central District came out with a new COVID
25 order either yesterday or today in which they said that no

1 criminal trials will be held for the foreseeable future.

2 THE COURT: I think I am going to just adjourn the
3 trial date sine die and schedule a conference date for mid
4 October. That is not to say that Mr. Sobelman's points lack
5 force.

6 Indeed, given the way the protocol is drafted, there
7 is a risk that by not setting a trial date, it gets sort of
8 lower in the totem pole if you will. But the truth is that my
9 backlog and calendar for next year are such a mess right now
10 that I'm not sure I even could realistically give you a date.

11 If trials resume in October, we'll have a much better
12 sense of how quickly things can proceed. We may know when the
13 California case is going. On top of all that, we have new
14 counsel who needs to get up to speed.

15 So I just don't think it's realistic to set anything
16 more than a fantasy date. I'm not really in the practice of
17 setting fantasy dates. So I'd rather come back and set a date
18 that is more realistic in October.

19 So with that, why don't we plan to convene on
20 October 13 when at least everyone, other than Mr. Baum, was
21 planning to be in my courtroom. We'll convene let's say at
22 10:00 on the morning of October 13 for a conference, and
23 hopefully we can do that in person and plan to set a trial date
24 at that time.

25 So, counsel, you should confer with one another with

1 respect to setting a trial date. As I think you know, when I
2 set a trial date, as far as I'm concerned, it is a firm date.

3 But right now that comes with a pretty significant
4 footnote/asterisk given the public health situation. That is
5 certainly a reason that I would adjourn a date. But for any
6 other reason, you can probably assume that I would not grant
7 any requests.

8 So you should come prepared to discuss a new trial
9 date with the understanding that COVID aside, it would be a
10 firm date and we can set it at that time.

11 Any questions? Anything else to discuss?

12 Mr. Sobelman?

13 MR. SOBELMAN: No, your Honor. Thank you.

14 THE COURT: Mr. Warren, I'll check with you. Anything
15 else?

16 MR. WARREN: Nothing else, your Honor.

17 THE COURT: All right. Mr. Baum, anything else on
18 your end?

19 MR. BAUM: Just to be sure and to clarify, Judge,
20 you're expecting to hear from me within two weeks of today
21 about publicly filing the eligibility affidavit?

22 Is that what you indicated?

23 THE COURT: That is correct. I suppose you should be
24 given a copy of it.

25 MR. BAUM: Yes.

1 THE COURT: Mr. Warren, can I impose on you to provide
2 a copy of what you filed under seal to Mr. Baum so that he has
3 that.

4 MR. WARREN: Absolutely, your Honor.

5 THE COURT: All right. Again, Mr. Baum, two weeks
6 from today. Unless you have no objection to it being unsealed,
7 you should file something that would show cause why it should
8 remain sealed, and the government and anyone else who wishes to
9 be heard can file something a week later.

10 Time is already excluded through October 13. So I
11 don't need to do anything on that front. Given all that, I
12 think we have done what we need to do. So I wish everybody a
13 pleasant, relaxing weekend. Please stay safe and healthy. We
14 are adjourned. Thank you very much.

15 MR. BAUM: Thank you, your Honor. Is it.

16 MR. WARREN: Thank you, your Honor.

17 (Adjourned)

18

19

20

21

22

23

24

25